IN THE

Supreme Court of the United States

October Term, 1969

No. 1049

GEORGE GABLE, doing business as
BOOK SALES CO.,

Appellant,

vs.

HERBERT T. JENKINS, Chief of Police
of the City of Atlanta,

Appellee.

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

REPORT OF OPINION OF COURT BELOW

The opinion of the court below has not been yet officially reported, but a copy is appended hereto.

CONCISE STATEMENT OF GROUNDS OF THIS COURT'S JURISDICTION

The action in the court below was brought before a three-judge U.S. District Court pursuant to Title 28, Sections 2281 and 2284, U.S.C.A. to enjoin the enforce-

ment of a statute of the State of Georgia on the ground that such statute was violative of the First Amendment to the United States Constitution, enforceable against the States by operation of the Due Process Clause of the Fourteenth.

The judgment sought to be reviewed was dated and entered October 24, 1969, and the notice of appeal was filed in the office of the Clerk of the United States District Court for the Northern District of Georgia on the 10th day of November, 1969.

Jurisdiction of this appeal has been conferred upon this Court under and by virtue of 28 U.S.C.A. #1253.

The cases believed to sustain the jurisdiction of this Court are *Zwickler v. Koota,* 389 U.S. 241, and *Dombrowski v. Pfister,* 380 U.S. 479.

The statute of the State of Georgia, the validity of which is involved in this appeal, will be found in Georgia Code 26-2101 and a verbatim copy is set forth in an appendix to this statement.

QUESTIONS PRESENTED BY THIS APPEAL

1. Whether Georgia Code Section 26-2101 is violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States in that it is too vague and fails to set forth proper standards for adjudication, and is overbroad on its face, violating the First and Fourteenth Amendments to the Constitution of the United States by prohibiting the dissemination of obscene materials to "any person."

2. Whether Georgia Code Section 26-2101 is violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States in that it

fails to provide for a prior judicial determination with an adversary hearing prior to an arrest or a prosecution.

CONCISE STATEMENT OF THE CASE

Appellant is engaged in the business of distributing for profit printed material consisting of books and periodicals to the general public, and the appellee is the Chief of Police of the City of Atlanta. A subordinate member of the Police Department visited appellant's place of business, seized a group of books and commenced a prosecution in the Municipal Court of Atlanta under the authority of the Georgia statute herein alleged to be unconstitutional.

Appellant applied for an Injunction and Declaratory Judgment, both temporary and permanent, against the Chief of Police, and a three-judge district court was convened. It was admitted and stipulated that the appellee would continue in the future to prosecute and arrest the appellant and seize his books if the statute was held constitutional.

The three-judge district court, after a hearing, held they had jurisdiction in the case, and entered a Declaratory Judgment that the statute was constitutional. A direct appeal was taken to this Court.

GROUNDS OF SUBSTANTIALITY OF FEDERAL QUESTIONS

The questions herein are substantial and require plenary consideration because the Georgia statute is too broad in that it makes penal the distribution of books and magazines "to any person", thereby prohibiting its dissemination to persons willing and desirous of reading or seeing such articles.